IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 15TH FEBRUARY 2007 / 26TH MAGHA 1928

Tr.P(Crl.).No. 13 of 2006()

CRA.238/2000 of ADDL.DISTRICT COURT (ADHOC)-II, MANJERI
CRRP.23/2004 of ADDL.DISTRICT COURT (ADHOC)-II, MANJERI

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PETITIONER:

KAMALASHI AMMA, W/O.NARAYANAN NAYAR,
KOVILAKAM ROAD, MANJERI, ERNAD TALUK,
MALAPPURAM DT.

BY ADV. SRI.T.K.AJITH KUMAR

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. ASARI PARAMBIL BALAKRISHNAN,
S/O.ACHUTHAN NAIR, EDAPPAL AMSOM,
PONNAZHIKKARA DESOM, MALAPPURAM (DT).

3. ASARI PARAMBIL DEVAKI,
D/O.ACHUTHAN NAIR, EDAPPAL AMSOM,
PONNAZHIKKARA DESOM, MALAPPURAM (DT).

BY ADV. SRI.P.VIJAYA BHANU
SMT.P.MAYA
PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS TRANSFER PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD ON 15/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Tr.P (C).No.13 of 2006

Dated this the 15th day of February, 2007

ORDER

This petition is filed by the petitioner for transfer of Criminal Appeal No.238 of 2000 and Crl.R.P.No.23 of 2004, both pending before the Additional Sessions Court (Fast Track) II Manjery to any other Sessions Court in Manjeri.

2. The petitioner is the mother of the deceased. The Assistant Sessions Judge, Thiruvalla, who tried the case as S.C.95 of 1992 had come to the conclusion that the accused persons are guilty of the offence punishable under Section 498 A I.P.C, but had found them not guilty of the offence punishable under Section 306 read with 34 I.P.C. Against the verdict of guilty, conviction and sentence under Section 498 A I.P.C, Crl.A.No.238 of 2000 was filed before the Sessions Court, Manjeri by the accused. Against the acquittal of the accused under Section 306 read with 34 I.P.C, a revision petition was filed by the petitioner before this Court. This Court realised that the connected appeal is pending before the Fast Track Court-I, Manjeri and had directed that the revision petition against acquittal under Section 306 be also transferred to that court for disposal.

3. Accordingly, both the appeal against conviction and the revision against acquittal came up before the Fast Track Court - I,

Manjeri. Later, on administrative reasons, the learned Sessions Judge withdrew both these matters and made them over to the Fast Track Court - II, Manjeri. Accordingly, both the appeal and revision are now pending before the Fast Track Court-II, Manjeri.

4. The petitioner has come to this Court with this prayer for transfer on two grounds. First of all it is contended that this Court had directed Fast Track Court-I, Manjeri to dispose of the matter and therefore proposed disposal of both the matters, by Fast Track Court-II, Manjeri is, not justified. This contention has no legs to stand on. By Annexure-D order, this Court had only wanted, it is evident, that both the appeal and revision must be disposed of by the same court, whichever be that court. From Annexure-D order passed by this Court, it cannot, at all be concluded that the direction was that the Fast Track Court-I, Manjeri must itself dispose of the case. The objection raised on the first ground must, in these circumstances, fail.

5. Secondly it is contended that when the Fast Track Court -II, Manjeri took up the matters for consideration, the learned Judge expressed the opinion that a revision petition by the petitioner is not maintainable in law. That view expressed by the learned Judge in the course of hearing, it is contended, instills in the mind of the petitioner a reasonable apprehension that she will not get justice at the hands of the learned Judge. Remarks of the learned Judge was called for. I have carefully gone through the averments in the petition for transfer,

affidavit filed by the petitioner along with a petition for transfer as also the remarks received from the learned Judge of the Fast Track Court-II, Manjeri. The learned Judge submits that he has no objection in the case being transferred, but proceeds to submit that he has not expressed any such opinion that the revision petition is not maintainable. He has an open mind on the question and shall hear the parties and dispose of the matter on merits, it is submitted.

6. I have considered the prayer for transfer. There is no representation for the petitioner when the matter came up for hearing. But after having anxiously considered all the relevant inputs, I am not at all persuaded to agree that there can be any reasonable and justifiable apprehension in the mind of the petitioner that she will not get justice at the hands of the learned Judge. I shall assume for the purpose of arguments that the learned Judge has expressed an opinion that a revision petition may not be maintainable. That expression of opinion, even if it be assumed to be legally incorrect, cannot justify the prayer for transfer. The petitioner's counsel can certainly argue that the revision petition is maintainable and I find no reason merely because of any alleged expression of opinion by the learned Judge that the petitioner would be justified in entertaining any reasonable apprehension that she will not get justice at the hands of the learned Judge.

7. I am of opinion that it will be absolutely unnecessary to direct transfer of the case at this juncture to any other court.

8. In the result, this Transfer Petition is, dismissed.

(R.BASANT, JUDGE)

rtr/-